

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**BRIAN LYDAY**

Claimant

VS.

**REDDI INDUSTRIES, INC.**

Respondent

AND

**KANSAS BUILDING INDUSTRY  
WORKERS COMPENSATION FUND**

Insurance Fund

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Docket No. 1,013,458

**ORDER**

Respondent and its insurance fund appealed the March 8, 2004, preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

**ISSUES**

Claimant contends he injured his back working for respondent as the result of a series of micro-traumas that commenced September 12, 2003, and continued through approximately October 1, 2003, which was his last day of employment with respondent. In the March 8, 2004, preliminary hearing Order, Judge Barnes granted claimant's request for medical treatment and temporary total disability benefits.

Respondent and its insurance fund contend Judge Barnes erred. They argue claimant failed to prove he gave respondent timely notice of the injury. That is the only issue on this appeal.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the Board finds and concludes:

In October 2002, claimant began working for respondent, a plumbing company. Claimant's plumbing duties included basic home repair and sewer and drain cleaning. Part

of claimant's job entailed lifting and handling a sewer machine that weighed somewhere between 200 and 300 pounds.

Before beginning work for respondent, claimant never had any problems with his back. However, in mid-September 2003, claimant began experiencing pain in his low back and symptoms down his left leg. Shortly afterwards, on September 16, 2003, claimant spoke with a physician assistant, whom he had been seeing for stomach problems. The physician assistant told claimant he had a sciatic nerve problem. Claimant was given lifting restrictions, which he then provided to respondent. At that juncture, claimant told respondent he believed his symptoms were related to leg stretches he had done at home.

Despite his ongoing symptoms, claimant continued working for respondent. On approximately September 18 or 19, 2003, after cleaning a sewer, claimant advised one of respondent's dispatchers his back was hurting and he wanted to see his chiropractor. On September 19, 2003, claimant saw the chiropractor, who attributed claimant's symptoms to a lifting or turning-type injury. According to claimant, the chiropractor ruled out an injury from leg stretches. Claimant relayed that information to his dispatcher.

On approximately October 1, 2003, respondent laid off claimant. At the time of his layoff, claimant contends he discussed with respondent's general manager, Thomas Steven, whether he was being laid off due to his work injury. But Mr. Steven, who also testified at the preliminary hearing, denies claimant ever related his back problems to his work.

Both claimant and Mr. Steven testified before Judge Barnes. Accordingly, the Judge had the opportunity to assess their demeanor and credibility. For the reasons below, the Board finds no reason to disturb the Judge's finding that claimant provided respondent with timely notice of the alleged back injury.

Claimant's testimony is uncontradicted he advised respondent's dispatchers that his back symptoms were related to his work. Although the dispatchers might not be considered claimant's immediate supervisors, respondent did place them in a position where their job required receiving and disseminating information regarding respondent's business activities. Moreover, claimant's testimony is credible that on October 1, 2003, he questioned Mr. Steven about whether he was being laid off due to his work injury. Consequently, the preliminary hearing Order should be affirmed.

**WHEREFORE**, the Board affirms the March 8, 2004, preliminary hearing Order.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 2004.

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BOARD MEMBER

c: Christopher Randall, Attorney for Claimant  
Roy T. Artman, Attorney for Respondent and its Insurance Fund  
Nelsonna Potts Barnes, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director